IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

CUSTOMS APPLICATION NO. 8 OF 2002.

The Commissioner of Customs (EP)... Applicant.
vs.
M/s 21st Century Engg. Services... Respondent.

Mr. A.J. Rana, Senior Counsel for the Applicant.

None for the respondents.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.

DATED : 19.6 .2006.

P.C. :

. Mr. Rana, learned Counsel appearing for the applicant submits that according to him, this application raises following substantial question of law:

.1 Whether on the facts and in the circumstances of the case the CEGAT was right in law in holding that the goods entered for export were fabricated steel structures and were eligible for benefit under the Duty Entitlement Pass Book (DEPB) Scheme and that there was no mis-declaration of the goods.

.2 Whether on the facts and in the circumstances of the case the findings of the CEGAT are perverse and unreasonable as they fail to take into account clinching evidence and material available on record namely that the order placed by the foreign buyer was for full machinery like Arc Melting Furnace Continuous Casting Machines, Cranes etc., and the description given in AR4 is for Continuous Casting Machine & Ancillary Equipment?

.3 Whether in the facts and in the circumstances of the case the Tribunal was right in law in holding that there was no

case for confiscation of goods and imposition of redemption fine of Rs. 5,00,000/- and penalty of Rs.2,50,000/- overlooking the fact that goods exported in complete knocked down state or semi knocked down state are classifiable as full machinery and the exporter had resorted to this method to avail DEPB benefit?

During the course of hearing, it transpired that no show cause notice was issued by the department to the respondents and the department proceeded to adjudicate upon the matter. This fundamental error leading to breach of principles of natural justice warrants us to hold that in absence of show cause notice adjudication proceedings could not have been proceeded with. No substantial question of law warranting adjudication thereof arises from the impugned order in view of basic defect in the impugned action which is ab-initio void, being in breach of principles of natural justice. No useful purpose would be served by answering the questions raised herein. In that view of the matter, issues sought to be raised are adjudicated upon.

Application is, therefore, rejected.

(V.C.DAGA,J.)

(J.P.DEVADHAR,J.)